



2024:DBO:4454-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 14 May 2024
Judgment pronounced on: 29 May 2024

+ ITA 928/2018

THE PR. COMMISSIONER OF INCOME TAX -9

..... Appellant

Through: Mr. Abhishek Maratha and Mr.
Parth Semwal, Ms. Nupur
Sharma, Mr. Manav, Mr.
Gaurav, Ms. Divya, Mr.
Bhanukaran, Advs.

versus

M/S TOPLINE BUILDTECH PVT. LTD.

.....Respondent

Through: Mr. Satyen Sethi, Mr. Artatrana
Panda, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV**

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J.

1. The present appeal under Section 260A of the Income Tax Act, 1961 ["Act"], impugns the order dated 13.04.2018 passed by the Income Tax Appellate Tribunal ["ITAT"], whereby, appeal of the



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respondent-assessee being ITA No. 6507/Del/2017 was allowed for the Assessment Year [“AY”] 2013-14.

2. The respondent-assessee is a company engaged in the business of civil construction as contractor and real estate developer. The respondent-assessee filed its Income Tax Return [“ITR”] on 30.09.2013, declaring a loss of Rs.5,30,72,598/- and paid taxes on book profits under Section 115JB of the Act and the same was processed under the provision of Section 143(1) of the Act. Thereafter, the case of the respondent-assessee was selected for scrutiny assessment and a notice under Section 143(2) of the Act was issued.

3. Subsequently, on 28.03.2016, the Assessing Officer [“AO”] passed an order under Section 143(3) of the Act determining the total loss of Rs.5,10,62,730/-. While framing the assessment order, the AO made the following additions: -

- i) Addition of Rs.89,37,613/- under Section 68 of the Act on account of sundry creditors which included Transearch Consultants Pvt. Ltd. [“TCPL”]
- ii) Addition of Rs.5 crores under Section 68 of the Act on account of unsecured loans from M/s. Maple Technology Ltd. [“MTL”], and M/s. Mari Gold Overseas Limited. [“MOL”]

4. Being aggrieved by the order of the AO, the respondent-assessee preferred an appeal before the Commissioner of Income-Tax (Appeals) [“CIT (A)”], who *vide* order dated 22.09.2017, partly allowed the appeal of the respondent-assessee. The CIT(A), out of the total addition of Rs.89,37,613/- made by the AO on account of sundry creditors, deleted the addition of Rs.71,37,613/- holding that the balance due to the respective parties was coming from previous years. However, it upheld the addition of Rs.18,00,000/- on account of TCPL holding that



the genuineness of the credit was not proved. The CIT(A) also upheld the addition of Rs.3.70 crores and Rs.1.30 crores made by the AO on account of outstanding loans due to MTL and MOL, respectively, holding that the genuineness of the loans was not proved because both the above companies were not carrying out any business activity.

5. Thereafter, the respondent-assessee preferred an appeal before the ITAT. *Vide* order dated 13.04.2018, the ITAT allowed the appeal and deleted the additions in entirety. The Revenue, therefore, has preferred the instant appeal.

6. *Vide* order dated 02.08.2023, this Court had admitted the present appeal on the following questions of law: -

“(i) Whether the ITAT erred, on facts and in law, in deleting the addition of Rs. 18,00,000/- made by the AO under Section 68 of Act, in relation to the Sundry Creditor, Transearch Consultation Pvt. Ltd.?”

(ii) Whether the ITAT misdirected itself, in facts and in law, in deleting the addition of Rs.5,00,00,000/- made by the AO under Section 68 of the Act in relation to unsecured loan received from Maple Technology Ltd. and Marry Gold Overseas Limited?”

7. The Revenue has challenged the order of the ITAT, firstly, on the ground that the ITAT has failed to appreciate that the respondent-assessee had failed to discharge the onus to prove the genuineness of the amount of Rs. 18,00,000/- on account of the sundry creditor, TCPL.

8. Secondly, the Revenue has also assailed the findings of the ITAT on the ground that the ITAT has ignored the fact that the unsecured loan amount of Rs.5 crores on account of MTL and MOL has not been explained by the respondent-assessee and is therefore, liable to be taxed under Section 68 of the Act.

9. It is, therefore, the case of the Revenue that the order of the ITAT suffers from perversity and thus, liable to be quashed.



10. Learned counsel for the respondent-assessee, on the other hand, vehemently opposed the arguments and he submitted that since the sundry credit to the tune of Rs. 15,00,000/- was accepted to be genuine, it cannot be said that the remaining part of the transaction of Rs. 18,00,000/- is not genuine.

11. He also submitted that since the doubt with respect to the genuineness of the unsecured loan of Rs.5 crore is on account of receipt of funds by MTL from Divine Infracon Pvt. Ltd., therefore, in the absence of any material, it cannot be said that the respondent-assessee introduced its own unaccounted income as loan from MTL.

12. We have heard the learned counsels appearing on behalf of the parties and perused the record.

13. With regard to the first contention relating to the proof of genuineness of the amount of Rs.18,00,000/- on account of sundry creditor namely, TCPL, the ITAT has made a categorical finding that the respondent-assessee had a running account with TCPL having substantial movement in the account of the creditor. It has also been held that the copy of the ledger account of TCPL which was filed before the AO manifested that against credit balance of Rs.33,00,000/-, there were four debit entries amounting to Rs.15,00,000/- and as such, a sum of Rs.18,00,000/- was outstanding as on 31.03.2013, which was written off on 31.03.2014. The ITAT held that the addition of the said sum would amount to double addition, for the amount had been written off and was offered to tax.

14. In this context, we may refer to the order of the ITAT, wherein, in paragraph no.7, while deleting the additions on account of sundry creditor with respect to TCPL under Section 68 of the Act, it has been

held as under: -



“7. We have considered the rival submissions. The A.O. noted in the assessment order that notice under section 133(6) have been issued to 05 sundry creditors including M/s. Transearch Consultations Pvt. Ltd., but no reply and documents have been furnished. In the absence of requisite information/documents, the A.O. made the addition of Rs.18 lakhs under section 68 of the I.T. Act. The assessee-company submitted before the Ld. CIT(A) that the same is running account of the creditor and there have been substantial movement in the account during the year under consideration. Copy of the ledger account was furnished before A.O. during the course of assessment proceedings. This fact has not been rebutted by the authorities below. It would mean that ledger account of the party was available before the authorities below and the A.O. in the assessment order also mentioned that assessee-company filed the details and documents and case have been discussed with the assessee-company. The assessee-company submitted before the Ld. CIT(A) that Section 41(1) would not apply because the liability have not been written back in the account. This fact is also not disputed by the authorities below. Copy of the ledger account is also filed on record which shows that during assessment year under appeal there were many transactions conducted between assessee-company and M/s. Transearch Consultations Pvt. Ltd. **This party/creditor has transferred Rs.33 lakhs on different dates in the account of the assessee-company through banking channel and similarly there are 04 debit entries of Rs.15 lakhs and the amount of Rs.18 lakhs was credit closing balance at the end of the year. On 31st March, 2014, the same amount was written off in the books of account and has been offered for taxation. These facts would support the explanation of assessee-company that amount in question was received through banking channel and there are various entries between the parties and only addition was made of the closing balance without disturbing the other entries in the account of the creditor.** Addition of closing balance was, therefore, not justified on facts of case. Otherwise, the A.O. should have made full addition against the assessee-company of Rs.33 lakhs. The book results of the assessee-company have not been disturbed by the A.O. The decision in the case of CIT vs. Ritu Anurag Aggarwal (supra) would support the case of the assessee-company. The assessee-company has also written back the amount in question in subsequent year which is also supported by the ledger account of this party. Since the assessee-company has offered the same amount for taxation in subsequent year, therefore, if the said addition is maintained in the assessment year under appeal, it would amount to double addition. Otherwise also, it is a case of loss, therefore, when amount is surrendered subsequently for taxation, at the best, it could be a tax neutral exercise. Considering the totality of the facts and circumstances of the case,



we do not find any justification to sustain the addition. We, accordingly, set aside the orders of the authorities below and delete the addition of Rs.18 lakhs. This issue is decided in favour of the assessee-company.”

15. With respect to the second contention relating to the unsecured loan amount of Rs.5 crores on account of MTL and MOL, the ITAT noted that the respondent-assessee cannot be asked to prove the source of the source since the entire case of the Revenue is with regard to the source of MTL and MOL. For reference, the relevant extracts from the order passed by the ITAT, particularly paragraph nos.13 and 15 are culled out, wherein, it was held that the respondent-assessee has proved the identity of the creditors:-

“13. We have considered the rival submissions. The A.O. found that there are fresh credits received by assessee-company from two creditors mentioned above. The assessee-company furnished copy of the ledger account, copies of their bank statements. The A.O. then issued notice under section 133(6) of the I.T. Act to both the creditors and both the creditors in their replies filed before A.O. confirmed giving of loans to the assessee-company which is supported by confirmed copies of their accounts, bank statements, ITR and balance-sheet. The A.O. however, noted that the creditors do not have any fixed assets or trade debtors/trade creditors and there were no revenue from the operation. The A.O. therefore, in order to verify the transactions, issued summons under section 131 to both the creditors and their common Director Shri Hitesh Garg who appeared before the A.O. in response to summon and confirmed the giving of loans to the assessee-company in his statement recorded under section 131 of the I.T. Act. The A.O. however, did not believe statement of this person because copy of the agreement was not filed. These facts and material on record clearly prove that identity of both the creditors are not in dispute because both the creditors are assessed to tax and have filed confirmation directly to the A.O. in response to notice issued under section 133(6) of the I.T. Act and also confirmed transaction with the assessee-company in the statement recorded under section 131 of the I.T. Act. The parties have been filed confirmed copies of their ledger account, bank statements, ITR and audited balance sheet in which the giving of loan to the assessee-company has been mentioned. All the transactions are routed through banking channel. Copies of the ledger account, income tax return, balance sheet and bank statement are filed on record. In the bank statements of the creditors, no cash was found



deposited before giving loans to the assessee-company. If in the case of M/s. Maple Technologies Ltd., there were transactions conducted of Rs.10 crore would support the explanation of assessee-company that such creditor was having capacity to give loan of Rs.3.70 crores to the assessee-company. The assessee-company paid interest on these loans to the creditor, on which, TDS have been deducted. The A.O. accepted the claim of assessee-company and did not disallow interest paid on such loans. Both the creditors are unrelated and independent parties. In the case of M/s. Marry Gold Overseas Limited the amount have been returned in subsequent year and in the case of other creditor M/s. Maple Technologies Ltd., the assessee-company written back the amount in subsequent year and shown its income. Therefore, it would amount to double addition in assessment year under appeal. It is well settled law that assessee-company cannot be asked to prove source of the source. Even then the Director of both the companies in his statement confirmed that source of giving loans to the assessee-company was advanced return by M/s. Divine Infracon Pvt. Ltd. However, the A.O. did not believe the explanation of the creditor because copy of the Rent Agreement was not filed. The A.O. has summoned both the creditors under section 131 of the I.T. Act in order to verify the genuineness of the transaction in the matter. The A.O. may ask the creditor to explain the source but assessee-company cannot be asked to explain the source of the source. Since Shri Hitesh Garg was summoned as witness of the Department and in case, he did not produce the Rent Agreement subsequently, A.O. should explain as to what steps have been taken by the him against this witness of the Department for production of the Rent Agreement as per law. Therefore, if the A.O. has not taken any steps against his own witness, no adverse inference should be drawn against the assessee-company. Thus, the sole basis left for consideration is that Revenue doubted the creditworthiness of the creditors because of the low income reflected in their return of income and that they have no fixed assets or debtors or creditors. However, A.O. has not undertaken any investigation of the veracity of the documents submitted by the assessee-company. The bank statement of the creditors show that both creditors were having sufficient amounts in their bank accounts for giving loans to the assessee-company. The A.O. have not made any investigation and nothing has been brought on record if the amount of loan given by both the creditors actually received from the coffers of the assessee-company so as to enable it to be treated as undisclosed income of the assessee-company.

15. The decisions relied upon by the Learned Counsel for the Assessee squarely apply to the facts and circumstances of the case. Thus, the assessee-company proved the identity of the



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creditors, their creditworthiness and genuineness of the transaction in the matter. The decisions relied upon by the Ld. D.R. do not support the case of the Revenue. In view of the above discussion and evidence and material on record, we do not find any justification to sustain the addition. We, accordingly, set aside the orders of the authorities below and delete the addition of Rs.5 crores. This issue is decided in favour of the assessee company.”

16. It is thus seen that the ITAT has correctly evaluated the facts and has rightly arrived at the conclusion. The questions, therefore, earlier framed by this Court need to be answered negatively and in favour of the respondent-assessee.

17. In view of the aforesaid, the appeal stands dismissed. Pending application(s), if any, are also disposed of.

PURUSHAINDRA KUMAR KAURAV, J.

YASHWANT VARMA, J.

MAY 29, 2024/ag

Signature Not Verified

Digitally Signed
By: MAANAS JAJORIA
Signing Date: 29/05/2024
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